

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 15199
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 25, 2000, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable year 1998 in the total amount of \$632.

On November 7, 2000, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and stated he had nothing further to present. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer timely filed his 1998 Idaho income tax return. However, the return he filed was a married filing joint return with [Redacted] that lacked [Redacted] signature. The Tax Commission's processing division stopped the return from processing and contacted the taxpayer to get [Redacted] signature. A signature was not provided; however, the Tax Commission later found that [Redacted] had filed a separate Idaho income tax return.

The taxpayer's return was referred to the Tax Discovery Bureau (Bureau) who contacted the taxpayer to determine his proper filing status. Through correspondence, the Bureau made the determination that the taxpayer should have filed a married filing separate return. The taxpayer submitted a married filing separate return to the Bureau. The Bureau reviewed the return and noticed a deduction for interest on a student loan. The Bureau disallowed the student loan interest deduction and sent the taxpayer a Notice of Deficiency Determination.

The taxpayer protested the Bureau's determination stating that he provided the support for his ex-wife. He believed he was entitled to file a married filing joint return. [Redacted]

signature was not on his original return because she was unavailable at the time the return was prepared.

The Tax Commission reviewed the matter and found a couple of problems with the taxpayer's position. First, a married filing joint return includes the income earned by both individuals for the year the return is reporting. The return the taxpayer submitted as a married filing joint return only reported the income earned by the taxpayer. The taxpayer's return did not include any of the wages earned by his ex-wife.

Second, a married filing joint return has to be elected by the filing parties. The signatures of both individuals evidence this election. Apparently, [Redacted] chose not to file a married filing joint return because she filed a separate return.

Seeing that [Redacted] filed separately; that the taxpayer did not include [Redacted] wages on the return he submitted; and that the taxpayer and [Redacted] were still married at the end of 1998, the Tax Commission finds the appropriate filing status for the taxpayer was married filing separate. Therefore, the Tax Commission agreed with the Bureau in its determination of the married filing separate filing status.

However, Idaho is a community property state and as such half of the income earned by each spouse is attributed to the other spouse. Therefore, half of the taxpayer's income is attributable to [Redacted] and half of [Redacted] income is attributable to the taxpayer.

The Bureau's determination did not include the half of [Redacted] income that was attributable to the taxpayer. However, it did include all of the taxpayer's income. Therefore, following the community property laws, the Tax Commission added half of [Redacted] income to the taxpayer's income and subtracted the half of the taxpayer's income that was attributable to [Redacted].

The Bureau added interest and penalty to the taxpayer's return per Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed these additions and found the addition of interest appropriate but the addition of the penalty inappropriate. The Bureau added a 25% delinquency penalty for failure to file a timely return. This penalty is inappropriate because the taxpayer filed his return by the due date April 15, 1999. Therefore, the Tax Commission reverses the addition of the delinquency penalty.

WHEREFORE, the Notice of Deficiency Determination dated September 25, 2000, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$165	\$37	\$202

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]                      Receipt No. [Redacted]  
[Redacted]      [REDACTED]

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ADMINISTRATIVE ASSISTANT 1